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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas
and Electric Company for Approval of its
2018-2020 Electric Program Investment
Charge Investment Plan (U39E).

Application 17-04-028
(Filed April 28, 2017)

And Related Matters.

Application 17-05-003
Application 17-05-005
Application 17-05-009

**APPLICATION OF THE PUBLIC ADVOCATES OFFICE
AT THE CALIFORNIA PUBLIC UTILITIES COMMISSION
TO REHEAR DECISION 18-10-052**

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) and California Public Utilities Code Section 1731(b), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), formerly the Office of Ratepayer Advocates (ORA),¹ submits this application for rehearing of Decision (D.) 18-10-052 (Decision).² The Commission mailed the Decision on November 2, 2018; thus, this application for rehearing is timely filed.³

The Decision approves Pacific Gas and Electric Company's (PG&E), San Diego Gas & Electric Company's (SDG&E), and Southern California Edison Company's (SCE) (collectively, Utility Administrators) 2018-2020 Electric Program Investment Charge (EPIC) Program triennial investment plans (Third Investment Plans) with modifications, and other programmatic considerations.⁴ Among the issues raised⁵ in this proceeding was SCE's failure to comply with the EPIC Program's rule prohibiting the funding of research and development (R&D) and technology demonstration and deployment (TD&D or demonstration) in the utilities' general rate cases (GRC).⁶ The Public Advocates Office provided substantial evidence that shows SCE

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

² D.18-10-052, *Decision Addressing Applications of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company for Approval of Their Triennial Investment Plans for the Electric Program Investment Charge for the Years 2018 through 2020, and Other Programmatic Considerations*.

³ Rule 16.1(a): "Application for hearing of a Commission order or decision shall be filed within 30 days after the date the Commission mails the order or decision . . ."

⁴ Decision, pp. 2-3.

⁵ Decision, p. 8.

⁶ D.12-05-037, *Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020*, Ordering Paragraph 17, p. 106 (issued May 31, 2012); in Rulemaking (R.) 11-10-003, states:

[The Utility Administrators] shall no longer include technology demonstration and deployment expenditures in their general rate castes (GRCs) unless specifically directed by the Commission to do so in a proceeding related to the Electric Program Investment Charge (EPIC). The investment plans for the EPIC program shall become the primary vehicle for considering utility proposals for electric research, development, and deployment (RD&D) purposes. [The Utilities] may continue to request separate funding for electric RD&D in their energy efficiency and demand response budget applications. If [the Utilities] propose other such expenditures outside of the EPIC investment plans, the utility will fact a burden to explain why such expenditures could not

funded TD&D projects in its GRCs in violation of the Commission’s prohibition of doing so. Not only did SCE violate the Commission’s prohibition against funding TD&D in its GRCs, SCE also circumvented the EPIC Program’s transparency requirements by failing to report its activities and use of ratepayer funds⁷. These issues are the focus of the Public Advocates Office’s application to rehear the Decision.

As discussed below, the Commission committed legal error because it failed to proceed in a manner required by law⁸ and, therefore, abused its discretion.² Specifically, the Commission abused its discretion by:

- Failing to separately state findings of fact and conclusions of law on the material issues of fact and law;
- Making inferences rebutted by clear, positive and uncontradicted evidence;
- Failing to make certain findings on material issues that would have the effect of countervailing or undermining the effect of other findings;
- Failing to properly weigh the evidence presented; and
- Reaching a conclusion that no reasonable person could reach.

For these reasons, as discussed below, the Commission should grant rehearing of the Decision.

II. BACKGROUND AND PROCEDURAL HISTORY

The Commission established the EPIC Program through Rulemaking (R.) 11-10-033 in order to benefit the public and ratepayers by funding research and development (R&D),

have been considered within the EPIC program. Any such request should explain how they meet objectives and metrics of the EPIC program. Any such applications shall be filed on the service list of the most recent EPIC proceeding and the most recent GRC proceeding of the relevant utility.

⁷ By violating the Commission’s EPIC prohibition against funding TD&D projects in its GRC, SCE required ratepayers to spend more than otherwise would be permitted to spend for TD&D. The Commission explicitly directed the utilities not to engage in such actions unless specifically ordered by the Commission to do so. “The EPIC program should be the primary vehicle for utility electric RD&D proposals other than the proposals submitted by the utilities for demand response and energy efficiency RD&D projects, and such investments should be removed in the future from the GRC proceedings and requests, unless specifically authorized in an EPIC-related proceeding.” [D.12-05-037, Conclusion of Law 15, p. 96.]

⁸ Public Utilities Code Section 1757(a)(2) [“The commission has not proceeded in a manner required by law.”].

² Public Utilities Code Section 1757(a)(5) [“The order or decision of the commission was procured by fraud or was an abuse of discretion.”] See also, California Code of Civil Procedure 1094.5(b) [“Abuse of discretion is established if the respondent has not proceeded in a manner required by law . . .”].

technology demonstration and deployment (TD&D), and market facilitation (collectively, RD&D) projects. In D.12-05-037, the Commission authorized EPIC from 2013 through 2020, establishing its purpose and governance structure. In D.12-05-037, the Commission required the Administrators of the program to file triennial investment plans for Commission approval that adhere to specific guidelines and criteria. The Commission authorized funding, to be collected from ratepayers, at an amount of \$162 million per year.¹⁰ The California Energy Commission (CEC) administers 80% of the EPIC funds and invests in RD&D projects, and the three large Utility Administrators administer the remaining 20% of the EPIC funds and are restricted to TD&D.¹¹ The Commission clarified that the “primary and mandatory guiding principle of the [EPIC Program] shall provide electricity ratepayer benefits, defined as promoting greater reliability, lower costs, and increased safety.”¹² In D.12-05-037, the Commission prohibited the Utility Administrators from requesting and funding TD&D projects in their GRCs.¹³ The Commission ordered the CEC and IOU Administrators to submit triennial investment plans to request approval of their proposed projects and budgets, among other things.¹⁴

On April 28, 2017, PG&E filed its Third Investment Plan. On May 1, 2017 the CEC, SDG&E, and SCE filed their respective Third Investment Plans. On June 5, 2017, the Public Advocates Office protested the CEC and Utilities’ Third Investment Plans. There, among other things, the Public Advocates Office requested that the Commission include a review of SCE’s failure to comply with the EPIC rules prohibiting the funding of demonstration projects in its GRCs. The Utility Administrators and CEC filed replies to the Public Advocates Office’s protest on June 22, 2017. On June 27, 2017, the Administrative Law Judge (ALJ) issued a ruling consolidating the applications and setting a date for a prehearing conference.

On July 12, 2017, the ALJ and assigned Commissioner (AC) held a prehearing conference. On August 18, 2017, the AC issued the *Scoping Memo and Ruling of Assigned*

¹⁰ D.12-05-037, Ordering Paragraph 8, p. 101; in R.11-10-003. [“The total collection amount shall be adjusted on January 1, 2015 and January 1, 2018 commensurate with the average change in the Consumer Price Index, specifically the Consumer Price Index for Urban Wage Earners and Clerical Workers for the third quarter, for the previous three years.”]

¹¹ D.12-05-037, p. 2.

¹² D.12-05-037, Ordering Paragraphs 2, 12, p. 99, 102-104.

¹³ D.12-05-037, Ordering Paragraphs 17, p. 106.

¹⁴ D.12-05-037, Ordering Paragraphs 11-12, pp. 102-104.

Commissioner (Scoping Memo), which included the Public Advocates Office’s request to examine SCE’s compliance with the prohibition against funding TD&D in GRCs.¹⁵

On January 16, 2018, the Commission issued its first phase decision in this proceeding, D.18-01-008, which specifically addressed the CEC’s Third Investment Plan and the overall budget. On September 11, 2018, the second phase proposed decision was issued. It addressed the Utility Administrators Third Investment Plans, including whether SCE violated the Commission’s EPIC rules. Parties filed comments on October 1, 2018 and reply comments on the proposed decision on October 8, 2018. The Commission issued the D.18-10-052 (Decision) on November 2, 2018, which is the subject of this application for rehearing.

III. DISCUSSION

A. **The Decision fails to include findings facts and conclusions of law on the material issue of whether SCE violated the Commission’s prohibition of funding R&D and TD&D in utility GRCs**

The Decision errs by failing to make findings of fact and conclusions of law on the material issue of whether SCE violated the Commission’s prohibition against funding R&D and TD&D in its GRC.¹⁶ In *California Motor Transport Co. v. Public Utilities Commission* (*California Motor Transport*), the Supreme Court of California “conclude[d] that under section 1705, the Commission must separately state findings and conclusions upon the material issues of fact and law that determine the ultimate issue of public convenience and necessity.”¹⁷ Here, the Scoping Memo included the material issue of whether SCE failed to comply with the Commission’s prohibition against funding R&D and TD&D in its GRC in the scope of the proceeding.¹⁸ The Decision affirmed that this issue was in the scope of the proceeding.¹⁹ Further, the Public Advocates Office submitted substantial evidence into the record showing that SCE violated the Commission’s prohibition by funding multiple R&D and TD&D projects in it

¹⁵ Scoping Memo, p. 9.

¹⁶ Decision 12-05-037, Ordering Paragraph 17, p. 106.

¹⁷ *California Motor Transport Co. v. Public Utilities Commission*, 59 Cal.2d 270, 275 (1963).

¹⁸ Scoping Memo, p. 9.

¹⁹ Decision, p. 8.

GRCs.²⁰ SCE responded to the Public Advocate Office’s arguments and evidence.²¹ Thus, there is no question that whether SCE violated the Commission’s prohibition was identified, and remained throughout the proceeding, a material issue. The Decision’s failure to issue any findings of fact and conclusions of law on this material issue constitutes legal error under *California Motor Transport Co.*²²

Moreover, it is a bedrock principle that triers of fact are required to make findings on material issues raised in pleadings, even when parties have not produced evidence on the material issues. In *Speegle v. Leese*, the Supreme Court of California concluded that “[i]t is the duty of the trial court to find upon all the material issues made by the pleadings, whether evidence be introduced or not, and if there be no finding on a material issue, the judgment cannot be supported.”²³ Here, the record shows that the Public Advocates Office not only raised the material issue of whether SCE violated the Commission’s EPIC Program rules, in multiple pleadings, but it also offered substantial evidence on the issue. The Commission was cognizant of both the issue and record evidence because the Decision discusses the Public Advocates Office’s allegations against SCE.²⁴ The fact that the Decision acknowledges the evidence further highlights the Commission’s error in failing to make findings.²⁵

B. The Decision improperly indulges in inferences rebutted by clear, positive and uncontradicted evidence

In *Fullerton Union High School District v. Riles (Fullerton)*, the California Court of Appeal stated that “[a] tier of fact may not indulge in inferences rebutted by clear, positive and

²⁰ ORA Opening Comments on Evaluation Report, (filed October 2, 2017), pp. 11-29. See also, ORA Opening Comments on Evaluation Report, Appendix A.

²¹ SCE Reply Comments on Evaluation Report (filed October 23, 2017), pp. 5-7.

²² *California Motor Transport Co.*, 59 Cal.2d 270, 275 (1963) [the court annulled the Commission’s decision for failing to find on material issues. The court held that “[t]hough it is within the discretion of the commission to determine the factors material to public convenience and necessity [internal citation], section 1705 requires it to state what those factors are and to make findings on the material issues that ensue therefrom.”] citing *Los Angeles Met. Transit Authority v. Public Utilities Com.*, 52 Cal.2d 655, 658-659, 343 P.2d.

²³ *Speegle v. Leese*, 51 Cal. 451 (1876).

²⁴ Decision, pp. 122-127.

²⁵ *Greyhound Lines, Inc. v. Public Utilities Commission*, 65 Cal.2d 811, 813 (1967) [“the commission’s decision in this case discloses that there were other material issues on which evidence was introduced . . . However, the decision contains no findings separately stated thereon.”]; citing *Associated Freight Lines v. Public Utilities Com.*, supra (1963) Cal.2d 583, 30 Cal.Rptr. 466, 381 P.2d 202.

uncontradicted evidence.”²⁶ A review of the Decision’s discussion about the Public Advocates Office’s evidence against SCE shows that the Commission improperly indulged in the inferences discussed below.

1. Substation Automation 3, Phase III Hybrid Solution

The Public Advocates Office argued and provided substantial evidence that SCE improperly funded its Substation Automation 3, Phase III Hybrid Solution (SA3-Hybrid), with GRC funds.²⁷ In its discussion, the Decision states that the evidence “documents the clear path followed by SCE to move the SA3-Hybrid technology from an EPIC-funded pre-commercial TD&D project to a GRC-funded pilot project.”²⁸ The Decision’s discussion is not only unsupported by the record evidence, it is directly contradicted by the evidence. First, the Decision fails to identify where in the record it found evidence to support its claim that SCE moved the SA3-Hybrid from an EPIC-funded pre-commercial TD&D project to a GRC-funded pilot.²⁹ In *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board (Asociacion de Gente Unida)*, the California Court of Appeal stated that “‘mere conclusory findings without reference to the record are inadequate.’”³⁰ Not only is the Decision’s portrayal of SCE’s actions and motivations unsupported by the evidence, all the reasons the Decision sets for to defend its representation of the record are rebutted by clear, positive and uncontradicted evidence.

For example, the Decision states “there is no dispute that SCE sought and received Commission approval for the SA3-Hybrid in its first EPIC Plan: as such, the project was funded

²⁶ *Fullerton Union High School District v. Riles*, 139 Cal.App.3d 369, 383 (1983); citing *Hicks v. Reis*, 21 Cal.2d 654, 660, 134 P.2d 788.

²⁷ ORA Comments Addressing EPIC Evaluation Report, pp. 16-18.

²⁸ Decision, pp. 126-127.

²⁹ The Decision fails to identify when the SA3-Hybrid reached a post-demonstration technology status. For instance, SCE has never published an EPIC final report that provides “a comprehensive description of the project, present detailed findings and results, including a summary of all data collected and how that data may be accessed”²⁹ for the SA3-Hybrid. Nowhere in any of SCE’s EPIC annual reports did SCE state that it had completed SA3-Hybrid’s demonstration phases. The only detail SCE provides was that it decided to remove SA3-Hybrid from EPIC; it never, however, stated or suggested that it removed SA3-Hybrid because it has reached commercial viability and/or that SA3-Hybrid was ready to be funded with GRC funds for an advanced ‘pilot’ stage.

³⁰ *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Co.*, 210 Cal. 4th 1255, 1281 (2012) citing *Environmental Protection Information Center v. California Department of Forestry and Fire Protection*, 44 Cal.4th 459, 516 (2008).

for three years, 2012-2014.³¹ However, there is no evidence to support this statement. Importantly, it is a factual impossibility that SCE funded the SA3-Hybrid from 2012-2014 with EPIC funds because the Commission approved SCE's first EPIC Plan in November 2013.³² Thus, SA3-Hybrid funding, had it occurred using EPIC funds, could only have started as of November 2013. Further, the record evidence shows that SCE began work on the SA3-Hybrid in the third quarter (Q3) of 2015 using GRC funds.³³

The Decision also states, "the record material provided by [the Public Advocates Office] clearly demonstrates that SCE removed the SA3-Hybrid project from EPIC, began to use the technology in a post-TD&D manner, and openly funded it via its GRC."³⁴ This is incorrect. SCE confirmed that it funded SA3-Hybrid's Phases A-D with GRC funds.³⁵ In no uncertain terms, SCE stated that the GRC funds it spent on SA3-Hybrid were to fund a demonstration project:

The [SA-3 Hybrid] was broken into four phases (A-D) as described below. The [Phases A-C] were intended to demonstrate and provide the solution. Phase D completed the project with the solution developed and validated in phases A-C. SCE processed an internal change request to reduce the scope of EPIC project in March 2016.³⁶

Thus, SCE quite literally stated that the SA3-Hybrid remained a demonstration project when funded in SCE's GRC. Further, SCE attested to the fact that the "[SA3-Hybrid] started in Q3 2015. Phases A-C were completed in December 2015."³⁷ Yet, as stated above, SCE conceded that it "processed an internal change to reduce the scope of the EPIC project in March 2016."³⁸ This is consistent with SCE's 2016 EPIC annual report, which was issued on February 28, 2017 and chronicled all of SCE's 2016 EPIC activities. There, SCE stated "SA-3

³¹ Decision, p. 125.

³² D.13-11-025, Ordering Paragraph 8, p. 135.

³³ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 27.

³⁴ Decision, p. 126.

³⁵ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), pp. 26-27.

³⁶ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 26.

³⁷ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 27.

³⁸ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 26.

Hybrid scope has been completely dropped from the SA-3 phase III demonstration.”³⁹ Thus, the record evidence in fact proved that SCE funded the SA-3 Hybrid in its GRC starting in 2015, the SA3-Hybrid remained a demonstration project, and that SCE removed the SA3-Hybrid from EPIC in 2016. Therefore, the Decision’s assertion that SCE funded the SA3-Hybrid in its GRC only after it became a post-EPIC demonstration project is rebutted by the clear, positive and uncontroverted evidence.

2. Substation Automation-3, MacArthur Substation, Irvine Smart Grid Demonstration and Distribution Energy Storage Integration

The Public Advocates Office provided substantial evidence to show that Substation Automation-3 (SA3) MacArthur Substation, Irvine Smart Grid Demonstration (ISGD) (SA3-ISGD) and Distribution Energy Storage Integration (DESI) are demonstration projects and that SCE improperly funded them with GRC funds.⁴⁰ With regard to the evidence and arguments that the Public Advocates Office provided with respect to these two projects; the Decision merely states “[the Public Advocates Office] comments on the [Proposed Decision] provide similar review of the PD’s finding’s on SCE’s [SA3-ISGD and DESI].”⁴¹ As a preliminary matter, the Decision statement is factually incorrect because the Proposed Decision (and the Decision for that matter) failed to make any findings of fact regarding any of the demonstration projects that the Public Advocates Office argued SCE improperly funded with GRC funds. In fact, the Proposed Decision failed to identify and discuss either the SA3-ISGD or DESI.

The Decision’s only discussion of the evidence with respect to SA3-ISGD and DESI comes in the overly broad statement that:

We have reviewed all of the discovery responses cited and provided by [the Public Advocates Office] regarding these projects, and we again find that this information in no way lends credence to [the Public Advocates Office’s] recommendation . . . that SCE violated the EPIC rules by funding projects in its GRCs, and that the Commission order SCE to show cause why it should not be penalized for violating the Commission’s EPIC rules.⁴²

³⁹ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 14.

⁴⁰ ORA Opening Comments on Evaluation Report, pp. 14-16, 22-26.

⁴¹ Decision, p. 127.

⁴² Decision, p. 127.

First, the discussion of the two project is inadequate because, as the court in *Asociacion de Gente Unida* stated, “[w]hile the findings need not be ‘extensive or detailed[,]’ ‘mere conclusory findings without reference to the record are inadequate.’”⁴³ The record is replete with clear, positive and uncontroverted evidence that shows the SA3-ISGD and DESI are demonstration projects, and that SCE funded them with GRC funds.

For example, with respect to DESI, the Public Advocates Office provided substantial evidence that shows even SCE identifies DESI as a demonstration project. Specifically, in September 2015, SCE made a presentation at the Independent Energy Producers Association’s (IEP) 2015 Annual Conference, titled “Distribution Energy Resources: Going Small” wherein SCE identified DESI as one of SCE’s 2015-2016 demonstration projects.⁴⁴ SCE also identified the two 25 kW community energy storage (CES) device components of DESI as SCE demonstration projects.⁴⁵ Moreover, SCE’s public website provided a “Battery Storage Fact Sheet” where again SCE identifies DESI as a SCE demonstration project.⁴⁶ Thus, the evidence shows that SCE defines DESI as a demonstration project.

Further, the record evidence shows that DESI utilized a pre-commercial technology, which, by definition, makes it a demonstration project. Specifically, the record shows that DESI is an energy storage demonstration project that utilized lithium-ion batteries. SCE stated that “it is generally accepted that Lithium-ion technology for grid-scale use reached commercial maturity around 2015.”⁴⁷ The record shows that SCE requested DESI in its November 12, 2013 filing,⁴⁸ prior to commercial maturity of lithium-ion technology. Also, in February 2014, still prior to the commercial maturity date of 2015, SCE explicitly stated that DESI utilized lithium-

⁴³ *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Co.*, 210 Cal.4th 1255, 1281 (2012) citing *Environmental Protection Information Center v. California Department of Forestry and Fire Protection*, 44 Cal.4th 459, 516 (2008).

⁴⁴ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 31.

⁴⁵ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 30.

⁴⁶ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 24.

⁴⁷ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 47.

⁴⁸ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 45.

ion batteries.⁴⁹ Thus, based on SCE’s own statements, DESI utilized a pre-commercial technology and, therefore, fell within the Commission’s definition of a demonstration project.⁵⁰

The record also shows that the Commission authorized PG&E’s First EPIC Plan request to fund the same exact energy storage lithium-ion battery technology using EPIC funds. Specifically, in the First EPIC Plan Decision, the Commission authorized PG&E’s EPIC Project 1.02,⁵¹ which is a lithium-ion battery energy storage project.⁵² The scope of PG&E EPIC Project 1.02 included purchasing a turn-key, commercially available 500kV/4-hour lithium-ion battery energy storage system.⁵³ The Commission authorized PG&E to use its EPIC funds to purchase the lithium-ion energy storage battery for its EPIC Project 1.02 on November 14, 2013 – two days after SCE filed its 2015 GRC requesting DESI. The record shows that no party, including SCE, objected to PG&E’s request and the Commission’s approval to use EPIC funds to purchase a lithium-ion battery because the parties and the Commission determined that funding lithium-ion batteries in 2013 met the definition of an EPIC demonstration project.⁵⁴

Regarding the SA3-ISGD, the Commission approved the SA3-ISGD as an EPIC demonstration project. Specifically, on November 1, 2012, SCE filed its First EPIC Plan. In its First EPIC Plan, SCE requested approval to use EPIC funds to support its Irvine Smart Grid Demonstration Project (ISGD).⁵⁵ SCE identified the SA3-ISGD as a component of the ISGD.⁵⁶ Specifically, SCE’s First EPIC Plan request for the Irvine Project specifically states “[t]his project will also deploy the latest generation of international standards based (IEC 61850)

⁴⁹ ORA Opening Comments on Evaluation Report (filed October 2, 2017), Appendix D (Excerpts from SCE’s 2014 Energy Storage Procurement Plan), p. 3.

⁵⁰ D.12-05-037, Ordering Paragraph 3(b), p. 100.

⁵¹ D.13-11-025, pp. 26-27, 33-34. See also, D.13-11-025, Conclusions of Law 9-10, p. 117; and D.13-11-025, Ordering Paragraph 7, p. 135.

⁵² ORA Opening Comments on Evaluation Report, Appendix B (Response to EPIC-InvestmentPlan 2012-14_DR_ORA-002), p. 1.

⁵³ ORA Opening Comments on Evaluation Report, Appendix B (Response to EPIC-InvestmentPlan 2018-20_DR_ORA-002), p. 1.

⁵⁴ ORA Opening Comments on Evaluation Report, Appendix B (Response to EPIC-InvestmentPlan 2018-20_DR_ORA-002), p. 8.

⁵⁵ ORA Opening Comments on Evaluation Report, Appendix F (Excerpts from SCE 2012-2014 EPIC Triennial Investment Plan), pp. 4-5.

⁵⁶ ORA Opening Comments on Evaluation Report, Appendix F (Excerpts from SCE 2012-2014 EPIC Triennial Investment Plan), pp. 4-5.

substation automation technologies at the MacArthur Substation.”⁵⁷ On November 14, 2013, the Commission approved SCE’s First EPIC Plan, including the Irvine Project and, thus, it also approved the SA3-ISGD project.⁵⁸ Though SCE received Commission authorization to conduct the SA3-ISGD as part of its Irvine Project, SCE’s EPIC annual reports show that SCE did not do so. Instead, the record shows SCE stated that it funded the SA3-ISGD in its 2015 GRC.⁵⁹

The record is replete with evidence that contradicts the Decision’s inferences that SCE did not violate the EPIC rules against funding demonstration projects in its GRC. The clear, positive and uncontroverted evidence shows that the SA3-Hybrid, SA3-ISGD, and DESI are demonstration projects. Therefore, the Commission abused its discretion because it “indulge[d] in inferences rebutted by clear, positive and uncontradicted evidence.”⁶⁰

C. The Decision fails to find on material issues that would have the effect to countervail or destroy the effect of other findings

The Decision fails to make findings on material issues that countervail its determination that SCE did not violate the EPIC rules against funding demonstration projects in GRCs. In *Renfer v. Skaggs*, the California Court of Appeal held that “[i]f the court fails to find on material issues made by the pleadings – issues as to which a finding would have the effect to countervail or destroy the effect of the other finding – and as to which evidence was introduced, the decision is ‘against law.’ In such a case, a re-examination of the facts is necessary in order that the issues of fact may be determined.”⁶¹ Here, the Public Advocates Office made pleadings and submitted evidence that have the effect to undermine and defeat the Decision’s determinations about SCE’s compliance with the EPIC rules. The Commission abused its discretion by failing to act upon that evidence and make findings on the material issue. In sum, that evidence is as follows:

SA3-Hybrid:

⁵⁷ ORA Opening Comments on Evaluation Report, Appendix F (Excerpts from SCE 2012-2014 EPIC Triennial Investment Plan), p. 4.

⁵⁸ D.13-11-025, Conclusions of Law 9-10, p. 117. D.13-11-025, Ordering Paragraph 8, p. 135.

⁵⁹ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.14-05-005 EPIC-ORA-SCE-002), pp. 10-11.

⁶⁰ *Fullerton*, 139 Cal.App.3d 369, 383 (1983); citing *Hicks v. Reis*, 21 Cal.2d 654, 660, 134 P.2d 788.

⁶¹ *Renfer v. Skaggs*, 96 Cal.App.2d 380, 383 (1950), citing *Swift v. Occidental Mining, etc., Co.*, 141 Cal. 161, 167, 74 P. 700; *Kaiser v. Dalto*, 140 Cal. 167, 169-170, 73 P. 828.

- SCE requested approval of the SA3-Hybrid in its 2012-2014 First EPIC Plan (A.12-11-004).⁶²
- In D.13-11-025, the Commission approved SCE's 2012-2014 First EPIC Plan, including SCE's request to fund the SA3-Hybrid.⁶³
- In 2015, SCE began work on the SA3-Hybrid using GRC funds.⁶⁴
- SCE stated that its SA3-Hybrid remained a demonstration even when using GRC funds.⁶⁵
- SCE stated that phases A-C of the SA3-Hybrid were completed by December 2015 using GRC funds.⁶⁶
- In March 2016, SCE removed the SA3-Hybrid from its EPIC portfolio.⁶⁷
- In its 2016 EPIC annual report, which was issued on February 28, 2017, SCE informed the Commission that it removed SA3-Hybrid from EPIC.⁶⁸
- SCE did not publish any EPIC final reports that stated the SA3-Hybrid had reached a post-demonstration technology status.⁶⁹
- SCE did not state in its EPIC annual reports that SA3-Hybrid had reached a post-demonstration technology status.⁷⁰

SA3-ISGD

- SCE requested approval of the SA3-ISGD in its 2012-2014 First EPIC Plan.⁷¹
- In D.13-11-025, the Commission approved SCE's 2012-2014 First EPIC Plan, including SCE's request to fund the SA3-ISGD.⁷²
- SCE funded the SA3-ISGD with GRC funds.⁷³

⁶² ORA Opening Comments on Evaluation Report, Appendix F, pp. 2-3.

⁶³ D.13-11-025, Ordering Paragraph 8, p. 135.

⁶⁴ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), pp. 26-27.

⁶⁵ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), pp. 26-27.

⁶⁶ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), pp. 26-27.

⁶⁷ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 26.

⁶⁸ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 14.

⁶⁹ SCE EPIC Website: retrieved from <https://www.sce.com/regulatory/epic>.

⁷⁰ SCE EPIC Website: retrieved from <https://www.sce.com/regulatory/epic>.

⁷¹ ORA Opening Comments on Evaluation Report, Appendix F, pp. 4-5.

⁷² D.13-11-025, Ordering Paragraph 8, p. 135.

⁷³ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _

- SCE did not publish any EPIC final reports that stated the SA3-ISGD had reached a post-demonstration technology status.⁷⁴
- SCE did not state in its EPIC annual reports that SA3-ISGD reached a post-demonstration technology status.⁷⁵

DESI

- SCE requested Commission approval of DESI in its GRC in 2013.⁷⁶
- SCE stated that DESI was an energy storage project that utilized lithium-ion batteries.⁷⁷
- SCE stated that, in 2013, energy storage projects that utilized lithium-ion batteries were pre-commercial technologies.⁷⁸
- In its 2012-2014 First EPIC Plan, PG&E requested approval of an energy storage project that utilized lithium-ion.⁷⁹
- In D.13-11-025, the Commission approved PG&E's request to use EPIC monies to fund an energy storage project that utilized lithium-ion batteries because it concluded that "[i]t is reasonable to allow PG&E to pursue energy storage research and demonstration . . ."⁸⁰
- EPIC defines TD&D as the demonstration of a pre-commercial technology.
- In 2015, SCE gave a presentation to the IEP where it identified DESI as a demonstration project.⁸¹
- SCE's own public website identifies DESI as a demonstration project.⁸²

Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-002), pp. 10-11.

⁷⁴ SCE EPIC Website: retrieved from <https://www.sce.com/regulatory/epic>.

⁷⁵ SCE EPIC Website: retrieved from <https://www.sce.com/regulatory/epic>.

⁷⁶ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from SCE 2016 GRC), pp. 5-8.

⁷⁷ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 47

⁷⁸ ORA Opening Comments on Evaluation Report, Appendix A (SCE Responses to ORA Data Request _ Response to Data Request Set A.17-05-005 EPIC-ORA-SCE-005), p. 45.

⁷⁹ D.13-11-025, pp. 26-27.

⁸⁰ D.13-11-025, Conclusion of Law 16, p. 118.

⁸¹ ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 31.

⁸² ORA Opening Comments on Evaluation Report, Appendix E (Excerpts from Reports and Presentations), p. 24.

IV. CONCLUSION

Public Utilities Code Section 1757(a)(4) requires that the Commission's findings be "supported by the evidence in light of the whole record." Here, the Decision fails to make any findings on the material issue and the scoping issue of whether SCE violated the Commission's EPIC Rules by funding demonstration projects in its GRC. What's more, the Decision's discussion of the evidence shows that the Commission abused its discretion because it failed to fairly consider and act upon all the evidence presented. In *The Utility Reform Network v. Public Utilities Commission (The Utility Reform Network)*, the California Court of Appeal stated that "[t]he 'in light of the whole record' language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record."⁸³ In *The Utility Reform Network*, the court further stated that "[r]ather, the court must consider all relevant evidence, including evidence that detracts from the decision, a task which involves some weighing to estimate the worth of the evidence."⁸⁴

Indeed, had all the evidence that the Public Advocates Office submitted been fairly considered and weighed, no reasonable person could have reached the determinations that the Decision made with respect to SCE's EPIC compliance. As such, the Commission abused its discretion because, in *SFPP, L.P. v. Public Utilities Commission*, the California Court of Appeal affirmed that " '[c]ourts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency.'⁸⁵ For these reasons, and the reasons stated above, the Commission should grant rehearing of the Decision.

⁸³ *The Utility Reform Network v. Public Utilities Commission*, 223 App.4th 945, 959 (2014).

⁸⁴ *The Utility Reform Network*, 223 App.4th 945, 959, citing *Lucas Valley Homeowners Assn. v. County of Marin*, 233 Cal.App.3d 1230, 141-142 (1991).

⁸⁵ *SFPP, L.P. v. Public Utilities Commission*, 217 Cal.App.4th 784, 794; citing, *Eden Hospital Dist. v. Belshe*, 65 Cal.App.4th 908, 915 (1998), [76 Cal.Rptr.2d 857].

Respectfully submitted,

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